

February 28, 2022

Dr. Laura Bloomberg
Provost and Senior Vice President for Academic Affairs
Cleveland State University

Dear Provost Bloomberg,

The following is a recommendation from the ad-hoc committee convened to evaluate the invocation of Article 8 of the CSU Collective Bargaining Agreement (CBA) in reference to allegations of research misconduct by Dr. Bryan Pesta, Professor in the Department of Management, Monte Ahuja College of Business.

Article 8 of the CBA and the CSU Administrative Code, Statement on Professional Ethics and Academic Responsibility states:

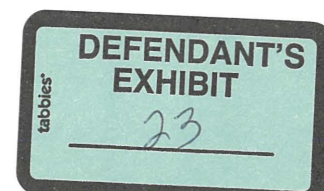
Before suspending a faculty member, the Chief Academic Officer shall consult with an ad hoc committee comprised of three (3) members of the bargaining unit and three (3) members of the academic administration with tenured faculty status appointed jointly by the President of the CSU-AAUP and the University's Chief Academic Officer ("ad hoc committee") and upon reaching a decision shall communicate in writing with the ad hoc committee and the CSU-AAUP.

Specifically, this ad-hoc committee was tasked with deciding—in considering evidence of research misconduct—whether the sanction you propose is an appropriate outcome based on Article 8 of the CBA and the CSU Administrative Code, Statement on Professional Ethics and Academic Responsibility.

For reference, Article 8 (specifically Section 8.2) of the AAUP Collective Bargaining Agreement (CBA) states:

Prior to dismissal or any sanction involving suspension, the Provost shall notify the faculty member and the CSU-AAUP in writing. Within ten (10) days of the written notification of dismissal or suspension, or such later date as agreed by the parties, the ad hoc committee shall convene a hearing at which the Provost, or designee, shall present the basis for the dismissal or suspension. The faculty member shall be present at the ad hoc committee hearing and shall have an opportunity to respond to the charges which are the basis for the proposed dismissal or suspension. The CSU-AAUP has the right to attend and participate in the ad-hoc committee hearing. The ad-hoc committee shall issue its recommendation not later than fifteen (15) University working days from the close of the hearing.

Pursuant to sections 3344-28-06(K)(5) and 3344-28-10 of the Research Misconduct Policy, an Investigatory Committee (hereafter referred to as the “Committee”) was convened in 2021 to determine if Dr. Pesta conducted research misconduct by a preponderance of the evidence. The



Committee, in their report dated January 13, 2022, concluded that there is “*clear and convincing evidence of multiple instances of research misconduct*” committed by Dr. Pesta (p. 6). The Committee noted 4 instances of misconduct. You cited these instances in your letter to Dr. Pesta and in your statement to this committee at the hearing called by CSU-AAUP on January 28, 2022, as the basis of your decision to sanction Dr. Pesta with dismissal from the University.

Prior to this hearing, the ad-hoc committee members reviewed the charges raised in your letter to Dr. Pesta dated January 13, 2022, the Final Report of the Investigatory Committee issued January 13, 2022, and Dr. Pesta’s reply to your letter dated January 25, 2022. After listening to arguments from you and Dr. Pesta at the January 28, 2022, hearing, ad-hoc committee members requested access to and subsequently reviewed supplemental documents cited in the Investigatory Committee’s final report and compiled by CSU’s Research Integrity Officer, Dr. Ben Ward. Finally, the committee considered Dr. Pesta’s written rebuttals sent via email before forming their conclusions below.

Although the ad-hoc committee considered several differences in opinion between you and Dr. Pesta, some of which are noted below, we recognized that one key point of contention is whether the charges and proposed sanction infringe on Dr. Pesta’s academic freedom. The 6 ad-hoc committee members were in unanimous agreement that any conclusions should be (and were) arrived at irrespective of the content of Dr. Pesta’s research.


Article 8 of the CBA provides 6 examples of actions that result in dismissal of a faculty member. The committee noted that the 4 findings/instances you cited as justification for your proposed sanction directly align with more than one of these 6 examples as just cause for dismissal.

The first 2 of these findings/instances relate to violations of policy initiated by the National Institute of Health (NIH) that resulted in a sanction of Dr. Pesta, which NIH claims is the most severe penalty ever levied on a principal investigator. The ad-hoc committee noted that these violations were upheld by NIH despite Dr. Pesta’s appeals. Therefore, the ad-hoc committee agrees with your claim that Dr. Pesta’s actions in totality regarding items 1 and 2 have the potential to seriously impact future interactions between NIH and CSU and that these violations directly conflict with CSU’s Administrative Code, statement on Professional Ethics and Responsibility, particularly “*responsibility to scholarship and to the institution.*”

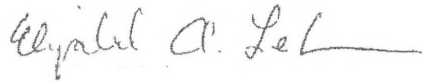
The ad-hoc committee then carefully considered the differences in opinions offered by Dr. Pesta and yourself regarding findings/instances 3 and 4. For finding/instance 3, “Failure to receive IRB approval...”, the committee noted that you and Dr. Pesta did not agree whether or when IRB approval for the research projects under investigation was necessary or prudent. However, the ad-hoc committee concurred with your claim that Dr. Pesta violated his responsibility to scholarship by violating the most basic ethical guidelines governing research involving human subjects. Regarding item 4, while you and Dr. Pesta appear to disagree as to whether Dr. Pesta’s use of funds from a non-profit organization to support his research—without declaring this action to CSU—constitutes a codified conflict of interest, the committee concluded that, at the very least, these funds were used to execute research and culminated in publication(s) that at some point included Dr. Pesta and his affiliation with CSU. Thus, this action is incongruent with Dr. Pesta’s responsibility to the institution.

In summary, according to the procedures listed in Article 8 of the CSU CBA, this ad-hoc committee was asked to determine whether the proposed dismissal of Dr. Bryan Pesta is warranted based on the policies set forth in Article 8. The committee members carefully reviewed the evidence you provided as justification for your charges and proposed sanction set forth in your letter to Dr. Pesta. The committee also requested access to and examined additional documents cited in the report of the Investigatory Committee. We equally considered rebuttals to these charges offered by Dr. Pesta during the hearing convened on January 28, in his reply to your letter, and in subsequent communications addressed to ad-hoc committee members via email.

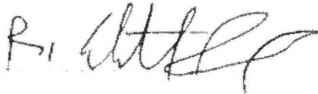
After careful consideration of the gravity of the proposed sanction, the members of the ad-hoc committee unanimously concluded that a decision to dismiss Dr. Bryan Pesta is warranted based on more than one of the 6 instances noted in Article 8.



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Associate Professor, Department of Physics



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CC:

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